

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUILLERMO ALDACO,

Defendant.

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CASE NO. 8:99CR16

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's petition for a writ of mandamus (Filing No. 172) and motion for leave to proceed in forma pauperis (Filing No. 174).

The Defendant argues that in his motion for relief filed under 28 U.S.C. § 2255, he raised a claim alleging ineffective assistance of appellate counsel when his attorney "deprived [him] of his rights to appeal when failing to raise issues of procedural and/or constitutional proportions or file an *Anders* brief proving that there were no arguable issues on appeal." (Filing No. 172, at 2.) However, in his § 2255 motion the Defendant stated the following claims and supporting facts:

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL DURING
THE COMMENCEMENT OF PLEA PROCEEDINGS**

**COUNSEL PROVIDED INEFFECTIVE ASSISTANCE WHEN HE ADVISED
PETITIONER TO PLEAD GUILTY TO THE INDICTMENT'S CHARGE
AFTER DISCOVERING THAT THE GOVERNMENT LACKED THE
EVIDENCE TO PROVE PETITIONER'S GUILT TO A JURY BEYOND A
REASONABLE DOUBT.**

**GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL DURING
THE PRE-TRIAL PHASE**

**DURING PRE-TRIAL PHASE COUNSEL FAILED TO FILE A MOTION TO
SUPPRESS A CO-DEFENDANT'S STATEMENT WHICH LACKED THE
RELIABILITY, TRUSTWORTHINESS AND CORROBORATIVE MEANS TO**

QUALIFY AS EVIDENCE AT TRIAL OR CONSIDERED [sic] BY THE JURY TO PROVE PETITIONER'S GUILT BEYOND A REASONABLE DOUBT.

GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PRE-TRIAL PHASE

COUNSEL PROVIDED INEFFECTIVE ASSISTANCE WHEN HE FAILED TO SEEK SUPPRESSION OF PETITIONER'S IDENTIFICATION DOCUMENTS FOUND AT ANOTHER'S RESIDENCE WHICH THE GOVERNMENT INTENDED TO USE AS EVIDENCE TO PROVE THAT PETITIONER WAS AN OCCUPANT OF THE RESIDENCE WHERE THE PACKAGE CONTAINING ILLEGAL CONTRABAND WAS DELIVERED AND SIMULTANEOUSLY FAILED TO PRESENT EXCULPATORY EVIDENCE OF PETITIONER'S TRUE RESIDENCE.

GROUND FOUR: INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PRE-TRIAL PHASE

COUNSEL PROVIDED INEFFECTIVE ASSISTANCE WHEN HE FILED A MOTION IN PETITIONER'S BEHALF CHALLENGING THE SEARCH OF THE RESIDENCE OF ANOTHER WHERE THE PACKAGE CONTAINING ILLEGAL CONTRABAND WAS DELIVERED WHEN SUCH A MOTIONS [sic] WERE PREJUDICIAL WHERE THEY ONLY ESTABLISHED PETITIONER'S ATTACHMENT TO THE CONTRABAND RATHER THAN HIS DETACHMENT FROM IT.

As the Defendant's own statement of the issues raised demonstrates, he did not include a claim of ineffective assistance of appellate counsel in his § 2255 motion.

Therefore, the Court did not err in not addressing such a claim.

IT IS ORDERED:

1. The Defendant's petition for a writ of mandamus (Filing No. 172) is denied;
2. The Defendant's motion for leave to proceed in forma pauperis (Filing No. 174) is denied as moot; and

3. The Clerk is directed to mail a copy of this memorandum and order to the Defendant at his last known address.

DATED this 20th day of May, 2009.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge